

Statewide Ecological Extinction Task Force

Tuesday, November 28th, 2017

1:00 p.m. – 5:15 p.m.

Senate Hearing Room, Legislative Hall

Meeting Attendance

Task Force Members:

Present:

Senator Hansen
Senator Richardson
Representative Gray
Representative Heffernan
Douglas Tallamy*
Matthew Sarver
Robert Thornton
Susan Barton
James White
Faith Kuehn
Kathy Stiller
Joseph Rogerson
Michael Petit De Mange**
Tracy Surles
Maria Evans
**Represented by Ashley Kennedy*
***Represented by Kris Connelly*

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Absent:

Michael Costello
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Attendees:

Chris Klarich
Dave Carey
Shauna Thompson
C. Scott Kidner
Greg DeCowsky
Howard Fortunato
Verity Watson
Hadey Salem

Organization:

Delaware Nature Society
Pemberton Branch
Pemberton Branch
Pemberton Branch
DNREC (Retired)
Home Builders Association
Home Builders Association
Legislative Assistant

The Task Force meeting was brought to order at 1:00 p.m.

Senator Hansen brought the meeting to order. The Task Force reviewed and approved the minutes from the last meeting.

Senator Hansen drew the Task Force members' attention to a document in their folders which consisted of a vote tally for recommendations that did not pass during the last meeting. She noted that after absentee voting was conducted over email, Recommendation 15 in the "Legislation Affecting Development" category passed.

Robert Thornton (Home Builders Association) added for the record that the Home Builders Association fully supports Recommendation 15.

Senator Hansen noted that Recommendation 20, the "Overarching Statement" for that category, did not pass as it received only eight votes in favor, two shy of a majority vote. Senator Hansen noted that the "Overarching Statements" serve as the "findings" for the Task Force's final report, and pointed out that it's important for each category to have at least one "finding" to justify passing recommendations associated with each category. She reviewed the recommendations in the "Legislation Affecting Development" section that already received a majority vote of approval, including those that were moved to a different category. She then proposed revisiting Recommendation 20 with the goal of establishing an "Overarching Statement" that a majority of Task Force members could approve.

Susan Barton (Delaware Landscape and Nursery Association) made a motion to change the wording from "is" to "may be".

Senator Richardson said that his concern was that "legislation" was too loosely defined and he did not want to open the door to further regulations. He added that he believes the emphasis

Minutes prepared by Jennifer Parrish, Legislative Assistant & Ashley Kennedy, Task Force Assistant

should be on education instead of legislation, and he considers legislation regarding what people can plant in their yards overreaching.

Senator Hansen noted that the “Education” category of recommendations was very well-developed, and added that having a “Legislation” category would not overshadow the “Education” category but would instead show that there are different methods of addressing the issue.

Matthew Sarver (Delmarva Ornithological Society) suggested changing “legislation” to “policy changes” to be more inclusive.

Susan Barton commented that another aspect of private property rights includes not having your property impinged upon and invaded by someone else’s poor choice of plants. She added that ordinances and regulations can be extremely helpful in changing the way people look at landscapes, i.e., encouraging people to have meadows instead of lawns, and noted that people should be allowed to have meadows on their own private property if they are managed.

Representative Heffernan agreed and shared an example in which a land owner clear-cut bamboo to comply with a neighborhood ordinance to prevent the spread of the bamboo to other properties.

Ashley Kennedy (University of Delaware) commented that she supports this recommendation and said that what land owners do on their own property does affect other properties. She provided a hypothetical example of a land owner not being able to dump toxic chemicals into a waterway on their own property because it is understood that the chemicals would have an impact on neighboring properties. She said that invasive plants can similarly be considered a toxic influence in communities.

Representative Gray shared his perspective as a former land developer. He noted that trying to develop land is difficult because of onerous EPA and DNREC restrictions, and if people are unable to build in a given location, they will then spread out more and encroach on other natural areas.

Senator Hansen and Susan Barton suggested striking “land developers” and “during land development” to broaden the language of the statement. The amended version with these and earlier suggested edits reads *“In order to improve and protect our ecosystems, policy changes at the state and/or local levels may be necessary. Policy changes may include such things as a bill or resolution passed by the General Assembly, an ordinance or resolution passed by a local*

government, a change in the regulations administered by state or local government, or a change in state or local government policy.”

Joseph Rogerson (DNREC) said he supported the change in wording, and added that Delaware has about 60 state- and federal-listed endangered species, of which the state-endangered species do not have any further protection. He said we need to protect our last populations of wildlife that may not necessarily be listed as endangered.

Maria Evans (Delaware Association of Realtors) asked if Delaware already has legislation to protect endangered species.

Matthew Sarver says there no statutory laws to protect state-listed endangered species. Joseph Rogerson added that all existing protections are for federally-listed endangered species. He said that only about a fifth of our state-endangered species are also federally listed.

Senator Richardson and Kathy Stiller opposed this recommendation, but all other Task Force members present voted in favor and the motion to approve passed.

At this juncture, Senator Hansen proposed that the Task Force take a break to have a group photo taken.

After the photo, Senator Hansen announced that there will be a press conference on Tuesday, December 5th, 11:30 a.m. at Ashland Nature Center, and invited everyone to attend. She encouraged Task Force members to let her know if they would like to speak at this event.

Senator Hansen next guided the discussion to the recommendations in the “Funding Open Space Program at Statutory Level” category. The first recommendation reads “*Overarching Statement: Utilization of the Open Space Program is an effective tool in stemming the loss of our native species.*” The motion to approve this recommendation passed with all in favor.

During discussion of the second recommendation, “*Fund the Delaware Open Space Program at the level required by statute*”, Senator Hansen said that this recommendation had been put forth by several Task Force members (Nature Conservancy, Delaware Nature Society, Delmarva Ornithological Society, and Representative Gray). She noted that the statute addressing this is 30 Del.C. Sec. 5423(c)(1). “(c)(1) Funds for the Open Space Program, and the earnings thereon to be retained therein, shall be applied by the Department to pay the costs of planning, and acquisition and development of property, to achieve the purposes of this subchapter. The program shall be funded by a transfer of \$9,000,000 of realty transfer taxes into the Endowment Account on or before December 15 of each fiscal year...”. Senator Hansen added that the statute

was waived for fiscal year ending June 30, 2018, by 81 Del. Laws, c. 59, § 10, with the result that the Open Space Program is currently unfunded.

Maria Evans said that the Delaware Association of Realtors is opposed to transfer taxes in general because they encourage bad development, and noted that she would be voting against this recommendation.

Senator Hansen pointed out that the recommendation as written does not specify the method of funding, but only the level of funding.

Senator Richardson and Maria Evans opposed this recommendation, but all other Task Force members present voted in favor and the motion to approve passed.

Senator Richardson commented that he voted against this motion because while he is in favor of the Open Space Program, he is against the real estate transfer tax for the reasons Ms. Evans gave.

During discussion of the third recommendation, Joseph Rogerson suggested mentioning the importance of connectivity between habitats.

Faith Kuehn (Department of Agriculture Division of Plant Industries) added that there is support for the Open Space Program in the Department of Agriculture, but they believe the priority should be lands adjacent to already existing state lands.

Susan Barton suggested combining the third and fourth recommendations into one, such that it reads “*Open Space Program funds should be used for purchasing high-quality habitats with native plants and trees, especially those habitats required for species of special concern and those that connect existing protected lands.*” The motion to approve this recommendation passed with all in favor.

During discussion of the fifth recommendation, “*Continue dedicating funds toward the Agricultural Land Preservation Program as finances permit*”, Representative Heffernan noted that Delaware is a General Fund state, so it is unusual for a statute to specify that a program’s funding comes from realty transfer taxes. The motion to approve this recommendation passed with all in favor.

Senator Hansen guided the discussion to the next category, “Legislation to Prohibit the Sale of Invasive Species”. She noted that it is important that the Task Force agree on which species are considered invasive, i.e., designate an invasive plant species list as a guiding authority. She noted that the Task Force has previously referenced both the Delaware Invasive Species Council list and a list compiled by William McAvoy from DNREC. She commented that she spoke with Mr. McAvoy and learned that he updates his list each year.

Jennifer Parrish (Legislative Assistant) provided a spreadsheet showing the results from the intern study on plants for sale in Delaware. Senator Hansen noted that the majority of species sold are non-native.

During discussion of the first recommendation, Joseph Rogerson suggested removing “plant” from “native plant species”, given that native insects and other wildlife are impacted by the spread of invasive plant species.

Susan Barton commented that this overarching statement is true and important, and reminded the Task Force that we should consider not only the number of invasive plant species sold, but also the overall number/volume of invasive plants sold. She noted that some invasive plant species such as garlic mustard, multiflora rose, and Japanese stiltgrass are not being sold in nurseries so we don’t have a means of controlling them, but we can prevent nurseries from selling other invasive plants like Callery pear, burning bush, and Norway maple.

Faith Kuehn added that the nursery and landscape industry would likely be supportive, or at least not strongly opposed to, such regulations, especially if they were given a lead time to implement them.

Susan Barton recommended using the list provided by the Delaware Invasive Species Council because it was compiled by numerous stakeholders rather than just one agency, but added that it is older and should be reevaluated.

Faith Kuehn agreed, adding that the Delaware Invasive Species Council list provides a good framework and assessment tool.

Matthew Sarver added his support for use of the Delaware Invasive Species Council list.

The final wording of the first recommendation was “*Overarching Statement: The sale of invasive plant species is an important factor contributing to the loss of native species in Delaware*”. The motion to approve this recommendation passed with all in favor.

The Task Force decided to merge the second and third recommendation into one due to their similarity, as both pertained to prohibiting the sale of invasive plant species.

Representative Heffernan noted that this raises the question of how the prohibition would be enforced.

Faith Kuehn said that within the Department of Agriculture Division of Plant Industries, there are employees who already regularly visit nurseries (e.g., to look for invasive insect species) and this could be added to their duties without much difficulty.

Ashley Kennedy noted that she believes this recommendation could be one of the best and most important things to come out of the Task Force’s efforts.

Susan Barton commented that the recommendation does not stipulate that land owners are responsible for removing invasive plants; it is only intended to prevent adding to the problem. She recommended dividing the recommendation into sub-parts, such that it reads “*Make the sale*

of invasive plants illegal in Delaware, allowing an appropriate phase-out period after legislation passes.

A) Invasive species are those on the Delaware Invasive Species Council plant list, as periodically amended.

B) The Delaware Invasive Species Council plant list must be reviewed and amended if necessary on a regular basis.”

Senator Richardson commented that if you make something illegal, it follows that there is a penalty for noncompliance, and he is against penalizing businesses without duly warning them.

Susan Barton noted that legislation is the best form of education; the publicity surrounding a new law would educate people, and nursery industry meetings and publications would also address this, so nurseries would not be caught unawares.

Senator Richardson, Kris Connelly, Maria Evans, and Kathy Stiller opposed this recommendation, but all other Task Force members present voted in favor and the motion to approve passed.

The fourth recommendation pertained to the Noxious Weed Control and Nuisance Plants laws. Susan Barton said that these laws are not pertinent to our goals because the former was written for a very different purpose (i.e., to protect agriculture) which should not be conflated with our goals, and the latter is problematic because there are no plants on the “Nuisance Plant” list.

Faith Kuehn agreed, saying that the definition of “noxious weed” in the code is very specific and different from the definition of “invasive species”. The motion to remove this recommendation passed with all in favor.

Senator Hansen guided the discussion to the next category, “Deer Management.”

During discussion of the first recommendation, Matthew Sarver suggested taking out the word “plant” such that it reads “*Overarching Statement: The proliferation of deer is an important factor contributing to the loss of native species in Delaware.*”

Senator Richardson suggested including agriculture, given that deer are detrimental to farmers.

Faith Kuehn acknowledged that while deer are a serious problem and an economic burden on farmers, that might be considered a separate issue from the focus of the Task Force.

Ashley Kennedy agreed, stating that there are other deleterious effects of deer overpopulation such as fatalities from vehicle collisions, but these are not within the purview of the Task Force.

The motion to approve the first recommendation passed with all in favor.

The Task Force decided to skip the second recommendation, which pertained to deer management in heavily populated areas, for the moment and return to it later in the discussion.

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During discussion of the third recommendation, Joseph Rogerson suggested changing “federal, NGO, county, and municipal conservation” to “landowners” such that it reads “*Encourage land owners and land managers to increase deer harvest as necessary to reduce impacts to key habitats.*” The motion to approve this recommendation passed with all in favor.

Matthew Sarver suggesting changing the wording of the fourth recommendation such that it reads “*Promote the availability of deer damage permits to non-agricultural land owners.*” The motion to approve this recommendation passed with all in favor.

The fifth recommendation reads “*Encourage farmers to utilize their crop damage tags by allowing hunting on their property.*” The motion to approve this recommendation passed with all in favor.

The sixth recommendation concerned allowing farmers to open their land to access by hunters at certain times. The motion to remove this recommendation passed with all in favor.

Joseph Rogerson inquired if the “Notes” column from each of the “Recommendations” documents will be included in the final report.

Senator Hansen said that they should be included in the discussion section of the report or in the appendix.

The seventh recommendation reads “*The sign-up process for the DE Severe Damage Program should be streamlined and more user-friendly.*” The motion to approve this recommendation passed with all in favor.

The eighth recommendation concerned legislation to allow farmers and land owners the right to protect their property from destructive wildlife year-round. The motion to delete this recommendation passed with all in favor.

At 3:15, the Task Force took a ten-minute break.

After the Task Force reconvened, Senator Hansen reminded the Task Force that there were two recommendations, numbers 19 and 20, in the “Government Leads by Example” category that had not yet been voted on, due to the Task Force’s decision to hold them until the discussion of next steps in the implementation of the recommendations was held. She guided the discussion to the topic of “Formation of the Delaware Native Species Commission.” She noted that Task Force members were given a document with the recommendation for this topic as well as descriptions of two agencies whose interests pertain to this topic, the Delaware Invasive Species Council, Inc., and the Delaware Native Plant Society. She mentioned that these are volunteer-based, nonprofit organizations which can dissolve at any time the Board of Directors or the membership chooses, and as advocacy groups, they are not bound to implement our recommendations or to have a balanced membership of different stakeholders on the commission.

James White noted the Delaware Nature Society, Delmarva Ornithological Society, and other organizations work towards these goals as well.

Faith Kuehn noted that this draft recommendation was shown to the Board of the Delaware Invasive Species Council this morning. She reported that the Board was enthusiastic about the existence of this Task Force and commented that they would make a good partner going forward.

Senator Hansen noted that we want to continue removing invasive species as well as promoting conservation of native species, adding that while there is some overlap, these are two distinct issues.

Representative Gray asked who would serve on the commission.

Kathy Stiller suggested that the same organizations/agencies, if not necessarily the same individuals, that took part in this Task Force could serve on the commission.

Senator Hansen said that the Task Force does not need to specify details of the commission membership at this time, but instead provide the basic framework (i.e., there should be a commission, the commission membership should be balanced, and the committee should report back to the General Assembly).

Representative Gray suggested going around the table and each member sharing their thoughts on this issue.

Ashley Kennedy said that she certainly supports the establishment of a commission and that Task Force members should be permitted to serve on it if they would like to do so.

Matthew Sarver agreed and said that a formal commission would be helpful and welcomed by the nonprofit community to help keep them on track.

Tracy Surles (New Castle County) agreed and said a commission would be needed to keep these efforts going, and having a commission would expose more people to these issues.

Kathy Stiller agreed and said the commission needs to be balanced but not so large that it becomes less effective.

James White agreed that a commission would be very valuable, and that the composition of this Task Force was very good. He noted that the Delaware Nature Society would certainly want to stay involved.

Maria Evans agreed that the formation of a commission is a good idea and added that the Delaware Association of Realtors would like to participate. She asked if there would be enough work to keep a commission going.

Senator Hansen replied that she certainly believed so, and asked if the Task Force would want to put a sunset on this.

Maria Evans asked if the commission would go under the Public Integrity Commission, given that it would be teaching classes to professionals.

Senator Hansen said that the commission would likely work within the Public Integrity Commission and with the Division of Regulation.

Robert Thornton said that we need to define what the charges of the commission would be, and that we should pull from existing organizations and decide how long the commission should meet. He noted that it is important not to adopt a punitive enforcement situation.

Faith Kuehn said that she is very supportive of a commission, and agreed that it would need to have clearly-defined goals and broad representation.

Joseph Rogerson agreed and said that many of our recommendations will not come to fruition without a commission to implement them.

Senator Richardson noted he has learned a lot from this Task Force and he is supportive of a commission to continue this work.

Representative Gray said that he would like to give the commission a chance, and liked the idea of sunseting it if it is no longer being productive after a period.

Senator Hansen said that the commission should decide how frequently to meet or how large it should be, but suggested specifying that it should meet no less than four times a year and have no less than twelve members. She suggested ten years as a sunset, noting that this is a fairly typical length, and added that no individual needs to commit to serving for ten years, but organizations in the membership can rotate their representatives on the commission as needed.

Maria Evans noted that this was the best-run Task Force she has served on, commending Senator Hansen for the clearly-defined goals and deadlines.

Senator Richardson asked if the commission would need to report back to the General Assembly via a document.

Senator Hansen responded in the affirmative, and suggested changing “periodical” to “yearly” in the text of the recommendation to make it more specific. She also suggested removing the last sentence, which concerned working collaboratively with the Delaware Invasive Species Council and the Delaware Native Plant Society, because it was unnecessary, as those organizations will likely take an active role on the commission.

Senator Richardson suggested adding “other” before “stakeholders.” With these changes, the recommendation reads “*The Delaware Native Species Commission should be formed by resolution of the General Assembly to implement the recommendations of the Task Force and report back to the General Assembly on a yearly basis. Its membership should reflect a balance of interests between environmental professionals, government, and other stakeholders and meet on a regular basis to be determined by the Commission. The Commission will sunset ten years after enactment unless reauthorized by the General Assembly.*” The motion to approve this recommendation passed with all in favor.

Senator Hansen guided the discussion to Recommendations 19 and 20 in the “Government Leads by Example” category.

Tracy Surles suggested combining these recommendations into one, such that it reads *“Develop model legislation or policy to make it easier for state or local government to make changes, such as adopting legislation (or policy) requiring native species for new government buildings and parks.”*

Senator Richardson suggested removing “model legislation”.

Senator Hansen said that from the perspective of local government, having model legislation is valuable.

Tracy Surles noted that model legislation would not be compulsory, but would allow local governments to choose what makes sense for them on a case by case basis.

Faith Kuehn commented that model legislation is indicative of a group of people with experience and insight coming together and developing something that will work, and many organizations develop model legislation so that others will not have to start from scratch.

Senator Hansen put this recommendation to a vote. Kathy Stiller and Senator Richardson voted against it, but all other Task Force members present voted in favor and the motion to approve passed.

Senator Hansen guided the discussion to the next category, “Recovering America’s Wildlife Act”. The first recommendation in this category reads *“By offering support of the Recovering America’s Wildlife Act, the Delaware Ecological Extinction Task Force supports the efforts of the Blue Ribbon Panel to identify an adequate and sustainable source of money dedicated to the conservation of species in greatest conservation need in an effort to prevent further population declines in some species of wildlife thus reducing the risk of more species becoming endangered.”*

Joseph Rogerson summarized the bill, explaining that it is a federal bill that, if passed, would dedicate funding to states to implement their state Wildlife Action Plans.

Chris Klarich (Delaware Nature Society) provided additional information, saying that the bill has support from numerous businesses, because it would cut down on the number of species listed as endangered. It would do so by preventing species decline as a preventative measure. He mentioned that the bill has support from the National Realtors Association, the Chamber of Commerce, and other groups.

Representative Gray asked what the impact would be on Delaware taxpayers.

Joseph Rogerson said that if it were passed, Delaware would be eligible for up to \$12 million annually in federal money, and would be required to provide a non-federal match of 25% to realize the full allotment. He noted that the non-federal match could come in the form of Open

Space funds, various grants, and time contributed by state employees. He concluded that there are numerous alternatives to a state tax to raise the non-federal matching funds.

Matthew Sarver added that hours put in by volunteers (e.g., Delaware Nature Society and Delmarva Ornithological Society HawkWatch volunteers) could also go toward the non-federal match.

Senator Richardson asked if part of the \$12 million would be reallocated to other states if Delaware did not realize the full 25% non-federal match. Joseph Rogerson replied in the affirmative.

Senator Hansen put the first recommendation to a vote. Representative Gray opposed this recommendation; all other Task Force members present voted in favor and the motion to approve passed. The representative noted that he voted against it because he has not read the Delaware Wildlife Action Plan in its entirety.

Joseph Rogerson explained that the second recommendation goes a step further, adding the Task Force to a national sign-on letter in support of the Recovering America's Wildlife Act. The recommendation reads "*The Delaware Ecological Extinction Task Force supports the efforts of the Blue Ribbon Panel to identify an adequate and sustainable source of money dedicated to the conservation of species in greatest conservation need and offers support of this effort by joining the Recovering America's Wildlife Sign-On Letter which can be found here:*

https://docs.google.com/forms/d/e/1FAIpQLScvMgnygWgk_nLeygYJ4tTVpX4bCDpFG_cbbZ_tOPA_JRwUlg/viewform."

Jennifer Parrish provided a print-out of the sign-on letter to Task Force members.

Joseph Rogerson noted that if the federal bill passes, Delaware is not mandated to come up with the non-federal matching funds, but any money that Delaware can get out of this is more than we had before.

Matthew Sarver commented that this is the best opportunity we have had at the federal level in his lifetime to make a generational change in how we handle wildlife conservation. He noted that this area of conservation has been tremendously underfunded, which has led to a long list of candidate species for the Endangered Species Act, something that is unpopular with businesses and land owners alike.

Representative Gray and Senator Richardson voted against this recommendation. Senator Hansen, Ashley Kennedy, Matthew Sarver, Tracy Surles, Kathy Stiller, Representative Heffernan, James White, Robert Thornton, and Joseph Rogerson voted in favor. With nine votes in favor, one shy of a majority vote, it was determined that this recommendation would be put to an absentee vote via email.

Joseph Rogerson explained that the third recommendation goes an additional step further. It reads "*Following the introduction of the Recovering America's Wildlife Act a letter on behalf of the Delaware Ecological Extinction Task Force shall be sent to Representative Lisa Blunt-*

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Rochester and Senators Thomas R. Carper and Christopher A. Coons requesting their support for the legislation.”

Representative Gray, Senator Richardson, and Robert Thornton voted against this recommendation; Senator Hansen, Ashley Kennedy, Matthew Sarver, Tracy Surles, Kathy Stiller, Representative Heffernan, James White, and Joseph Rogerson voted in favor. With eight votes in favor and three opposed, the recommendation neither passed nor failed, and it was determined that this recommendation would be put to an absentee vote via email.

At this point, the Task Force revisited the second recommendation under “Deer Management.” The Task Force amended the wording such that it reads “*Encourage the review of county code or local ordinances that may be inhibiting adequate deer harvest.*” The motion to approve passed with all in favor.

Senator Hansen indicated that a member of the public, Mr. Carey (Pemberton Branch), had provided a set of three recommendations to the Task Force for their consideration. She reminded members that Mr. Carey had previously spoken to the Task Force about concerns that DNREC had collected information on his private property. The first recommendation stipulated that all the illegally gained data be returned to the property owners and erased from all networks and files. The second concerned conducting a full review of DNREC’s data collection and analysis policy procedures. The third concerned having the Task Force support Senate Bill 133 as currently written; this bill would prohibit dissemination of natural resource data to any person or entity without written consent of the property owners. Senator Hansen noted that she believes this is a private property issue with DNREC and she did not want to make a recommendation without first investigating all the facts, which would include having witnesses from DNREC.

Tracy Surles commented that the mission of this Task Force is to make recommendations to further conservation of native plants and animals, and this issue is related, but only indirectly.

James White agreed that this issue is not within the scope of the Task Force.

Mr. Carey noted that he and his family share many of the same interests as the Task Force and consider themselves good stewards of natural resources.

Ashley Kennedy said that with only three days until the dissolution of the Task Force, we do not have time to consider recommendations outside of the Task Force recommendations, even if there was interest in doing so.

Senator Hansen suggested voting on whether the Task Force should consider recommendations outside of Task Force recommendations. The motion to avoid considering outside recommendations passed.

Senator Hansen ended the meeting with a reminder about the press conference on Tuesday.

The meeting was adjourned at 5:15 p.m.

